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8 BEFORE THE OFFICE OF THE INSURANCE COMMISSIONER  
9 OF THE STATE OF WASHINGTON

10 In the Matter of the Application regarding the  
11 Conversion and Acquisition of Control of  
12 Premera Blue Cross and its Affiliates.

No. G 02-45

TESTIMONY OF SCOTT BENBOW IN  
REBUTTAL TO REPORT SUBMITTED  
BY E. LEWIS REID ON NOVEMBER 10,  
2003

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- 15 1. My name is Scott Benbow. I have testified about my background and role at
  - 16 Consumes Union's West Coast Regional Office in my previously filed testimony.
  - 17 2. In his November 10, 2003, report to the Washington Insurance Commissioner, E.
  - 18 Lewis Reid states that the assets of Premera are not "public assets." (page 10.)
  - 19 And he criticizes the Cantilo and Bennett executive report for its assertions that
  - 20 Premera's assets are "owned by 'the public' or 'the citizens' of Washington and
  - 21 Alaska."
  - 22 3. Mr. Reid's position is surprising because, as both the former President and CEO of
  - 23 The California Endowment and as counsel to Blue Cross of California (BCC) in its

1 1996 conversion to Wellpoint, he should be aware that the regulator overseeing the  
2 transaction, Corporations Commissioner Gary Mendoza, asserted that the assets of  
3 BCC were owned by the public. It is clear from the Commissioner's statements  
4 that he was using the word "public" to mean the people of the state rather than the  
5 state government. Thus, he enforced California nonprofit law in order to facilitate  
6 the creation of two nonprofit health foundations for the benefit of the people of  
7 California. But for Commissioner Mendoza's strong stance on this issue and his  
8 position that the public was the "owner" of BCC's assets, the two foundations,  
9 including The California Endowment, may never have been created.  
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11 4. The story about the conversion of BCC may be helpful to the Insurance  
12 Commissioner as he considers Premera's application to convert. The following is  
13 a description of the conversion of Blue Cross of California, and I have attached an  
14 article from The Chronicle of Philanthropy to help tell the full story. Attached as  
15 Exhibit 1 is a true and correct copy of "Cal. Blue Cross to Create Foundations  
16 Worth \$3.2 Billion as It Goes For-Profit," The Chronicle of Philanthropy,  
17 September 21, 1995, at 12.  
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19 5. In 1993, nonprofit BCC transferred approximately 90% of its business into a for-  
20 profit corporation called Wellpoint. California regulators originally approved the  
21 transaction without any formal nonprofit charitable asset distribution. At that time  
22 and for the following three years, the Department of Corporations was concerned  
23 that BCC's restructuring might prevent the company from fulfilling its  
responsibilities as a nonprofit corporation. In 1994, the Department of

1 Corporations determined that the transaction had failed to discharge its obligations  
2 as a nonprofit or to protect the charitable assets when the company restructured.

3 6. In written communications with BCC in 1994, Commissioner Mendoza stated his  
4 view that “the public is BCC’s shareholder” and noted that he was the  
5 representative of this shareholder. Attached as Exhibit 2 is a true and correct copy  
6 of the letter from Gary Mendoza, Commissioner of Corporations, to Mr. J. Kendall  
7 Anderson, dated May 6, 1994.

8 7. In discussions that ensued, BCC initially proposed distributing \$100 million of its  
9 assets to a charitable foundation. The Commissioner did not accept this figure.  
10 Ultimately, BCC agreed to distribute all of its assets, over \$3.2 billion, to two  
11 grant making health foundations, creating The California Endowment, a 501(c)(3)  
12 private foundation, and the California HealthCare Foundation, a 501(c)(4) entity.  
13 See Exhibit 1.

14 8. Mr. Reid’s position that the public is not the “owner” of Premera and that Premera  
15 can do what it wants with its nonprofit assets is similar to the position taken  
16 originally by BCC and many other converting Blue Cross and Blue Shield plans  
17 around the country. Most state regulators have firmly rejected this position and  
18 have required converting Blue Cross and Blue Shield plans to set aside the full  
19 value of their nonprofit assets in health-related foundations. Courts in a number of  
20 states have held that converting Blue Cross and Blue Shield plans have an  
21 obligation to set aside charitable assets. See Blue Cross and Blue Shield of Kansas  
22 v. Stovall, Unreported Case No. 97 CV 608 (January 7, 2000); and In re Blue  
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Cross and Blue Shield of N.J., Docket No. ESX-L-1591-97 (N.J. Super. Ct. Law Div. April 14, 1997), *affirmed on appeal*, In re Blue Cross and Blue Shield of N.J., A-004505-96T1 (N.J. Super. Ct. App. Div. Oct. 24, 1997).

9. Premera has already agreed to transfer assets to two foundations, one in Washington state and the other in Alaska. Accordingly, it is hard to understand why Mr. Reid alleges that Cantillo and Bennett’s assertions “confuse the analysis of the Commissioner’s duties.” In fact, Cantillo and Bennett’s analysis explains why Premera would propose to transfer potentially hundreds of millions of dollars to charitable foundations as part of the conversion.

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 15th day of April, 2004, in San Francisco, California.

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SCOTT BENBOW